

Amendment in response to
May 16, 2007 Office action

Atty Dkt No.: 1998P07977US03
Serial No.: 09/218,783

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REMARKS

Claims 1 – 27 remain in the application and stand rejected. Although this Amendment is being timely filed, the Commissioner is hereby authorized to charge any additional fees that may be required for this paper or credit any overpayment to Deposit Account No. 19-2179.

Claims 1 – 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,229,888 to Miloslavsky in view of newly cited U.S. Patent No. 6,430,283 to Willie and further in view of U.S. Patent No. 6,192,123 to Grunsted et al. The rejection is respectfully traversed.

Applicants note that Willie, which was filed prior to November 29, 2000, is a pre-AIPA reference. MPEP §2136. Further, Willie is being applied as a reference under 35 U.S.C. §102(e). Therefore, to qualify as a reference, Willie must qualify under the pre-AIPA version of 35 U.S.C. §102(e). *Id.* Thus, to apply as a reference under 35 U.S.C. §102(e), “the invention [must be] described in ... an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title **before** the invention thereof by the applicant for patent.” *Id.* (emphasis added).

As is apparent from the first page of Willie, the effective date is, therefore, March 30, 1999. The present application was filed December 22, 1998, more than 3 months prior to the §371(c) Willie date. Therefore, Willie is not available as a reference against the present application, *prima facie* obviousness has not been established and all claims are allowable over all references of record. Reconsideration and withdrawal of the rejection of claims 1 – 27 under 35 U.S.C. §103(a) is respectfully requested.

The applicants thank the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance for the reasons set forth above, the applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 1 – 27 under 35 U.S.C. §103(a) and allow the application to issue.

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As the applicants have previously noted, MPEP §706 "Rejection of Claims," subsection III, "PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED" provides in pertinent part that

If **the examiner** is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, he or she **may note** in the Office action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration**.

(emphasis added.) The applicants believe that the matter presented in the written description of the present application is quite different than, and not suggested by, any reference of record. Accordingly, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney by telephone at Direct Dial: 408-492-5336 for a telephonic interview to discuss any other changes.

Respectfully submitted,

August 10, 2007

(Date)



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